



REALITY CHECK:

Customer Complaints Against Indexed Annuities are Few and Declining

By Kim O'Brien, Executive Director, The National Association for Fixed Annuities

Background: Indexed annuities are insurance products that are currently and always have been regulated by state insurance departments. In January 2009, the SEC tried to gain jurisdiction over indexed annuities by publishing Rule 151A, a regulation that would classify indexed annuities as securities. In July 2009, the U.S. Court of Appeals for the D.C. Circuit blocked the SEC from implementing Rule 151A pending a study by the SEC of the potential impact the rule would have on capital formation and competition. The study has not yet been completed by the SEC.

In the meantime, two bills, S. 1389 and H.R. 2733, have been introduced in Congress to clarify that indexed annuities are insurance products that are regulated by state insurance departments, and that they are not securities under the jurisdiction of the SEC. Recently, Senator Thomas Harkin (D-Iowa) has offered an amendment to S. 3217, the Restoring Financial Stability Act bill, that would give states explicit authority to regulate indexed annuities.

When the SEC proposed Rule 151A to gain jurisdiction over indexed annuities, it stated its major rationale to be the need for additional consumer protection as evidenced by a rising number of customer complaints against indexed annuities. However, actual statistics gathered from the entities that currently regulate indexed annuities – state insurance departments – reveal that the number of customer complaints against indexed annuities is not only low, but also declining over time.

Customer Complaints are Supposedly the SEC's Rationale for Pursuing Rule 151A

On June 25, 2008, the SEC unanimously voted to propose a new rule that would require SEC registration for the offering of indexed annuities. SEC Chairman Cox began the meeting by noting that the rulemaking initiative was the product of a three-year collaboration between the SEC and the North American Securities Administrators Association in addressing senior sales practice issues. After sharing some brief statistics on complaints brought by seniors, Cox played for the audience an excerpt from an April 2008 NBC Dateline report called "Tricks of the Trade," which purports to reveal abuses in indexed annuity sales practices.

Similarly, when the SEC published its final Rule 151A in January 2009, the Background section of the document noted a key rationale for its desire to gain jurisdiction over indexed annuities was because the growth in the popularity of indexed annuities "has, unfortunately, been accompanied by growth in complaints of abusive sales practices."

The Reality: There are Few Customer Complaints Against Indexed Annuities

But is the SEC's assertion true? The answer is no.

The National Association of Insurance Commissioners (NAIC) regularly collects customer complaint data through its centralized electronic Complaint Database System (CDS), through which states voluntarily report closed complaints. First established in 1990, the CDS now houses data on more than 2 million complaints for all insurance lines in all 50 states.

The NAIC's report "Closed Confirmed Consumer Complaints by Coverage Type – As of May 21, 2010" reveals these complaint statistics by the type of annuity:

Type of Annuity	2007	2008	2009	Year-to-date 2010
Variable	351	379	392	113
Fixed (Declared Rate)	433	372	333	89
Indexed	225	213	159	49

Notice that the number of complaints against indexed annuities is low and declining over time.

Furthermore, consumers who own securities products register complaints with FINRA. Investment News¹ reports that FINRA arbitration claims against the products it regulates have increased by 43%.

Thus, it is apparent that customer complaints against indexed annuities are low and declining over time, whereas customer complaints against products regulated by the SEC are higher and increasing over time.

Conclusion: Existing Regulation is Sufficient

At the National Association for Fixed Annuities, we believe that indexed annuities are insurance products that are effectively regulated by state insurance departments and that consumers are better protected with the availability of competitive products without the costly and duplicative SEC regulations. We believe that the relative paucity of consumer complaints against indexed annuities discredits the SEC's primary rationale for proposing to bring indexed annuities under its jurisdiction.



¹ <http://www.investmentnews.com/article/20100122/FREE/100129956>